

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.15090 OF 1997

Date 18.10.2005

Between:

The Executive Engineer,

O&M Division No.1,

S.R.S.P. 503 219.

..... PETITIONER

AND

Narayana Dondiba, S/o.Dondiba,

C/o.2-2-1137/8/1, New Nalla kunta, Hyderabad-44.

.....RESPONDENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.15090 OF 1997

-

ORDER:

-

Questioning the award of the Labour Court-II, Hyderabad, in I.D.No.806 of 1992, dated 22.02.1996, the present writ petition is filed by the Executive Engineer, Irrigation and Command Area Development.

Facts, to the extent necessary for this writ petition, are that the first respondent filed an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), before the Labour Court contending that though he worked as an NMR from 20.05.1981 and had continuously worked upto 1986 without break in service, his services were terminated with effect from 31.10.1987, in violation of Section 25-F of the Act.

A counter affidavit was filed before the Tribunal by the petitioner herein

contending that the petitioner's establishment is not an industry, the claim is barred by *res judicata* in view of the order of the High Court, that on the date of filing of the I.D., the first respondent was not in service and that the first respondent had not satisfied the requirements of G.O.Ms.No.143, dated 16.03.1984, for regularization. It was also contended that there was a ban to engage NMR workers and since the first respondent's candidature was not sponsored by the Employment exchange, he did not have any right to secure employment.

The first respondent examined himself as W.W.1 and marked Exs.W.1 to W.3 before the Labour Court. Ex.W.1, dated 31.08.1986, was the Xerox copy of his service certificate. Ex.W.2 was another Xerox copy of his service certificate and Ex.W.3 was the order of this Court in W.P.No.1190 of 1987, dated 04.02.1987.

While it is true that the burden is on the workman to establish that he had rendered continuous service of 240 days within a period of 12 calendar months prior to his termination, once the initial burden is discharged, the burden shifts on the employer. In the present case, the workman not only examined himself as W.W.1, but also marked Exs.W.1 and W.2 service certificates in support of his plea that he had worked under the petitioner for five years. This deposition of the first respondent remained unchallenged since he was not even subjected to cross-examine by the petitioner nor did the petitioner adduce any evidence in support of its plea that the first respondent had never been engaged by them.

Learned Government Pleader would submit that this Court, in W.P.No.1190 of 1987, dated 04.02.1987, had in a petition filed by 26 employees including the first respondent seeking regularization in terms of G.O.Ms.No.143, dated 16.03.1984, merely directed the respondent to absorb the petitioners in case the requirements of G.O.Ms.No.143, dated 16.03.1984, were satisfied. Learned Government Pleader would submit that in view of the orders passed by this Court in W.P.No.1190 of 1987, dated 04.02.1987, the principles of *res judicata* would apply and similar proceedings in I.D.No.806 of 1992 would be barred.

The distinction between regularization and reinstatement cannot be lost sight of. The petitioner was an NMR workman and, for violation of Section 25-F of the Act, would, at best, be entitled to be reinstated as an NMR. Regularisation of

services is an altogether different matter and it is only if the first respondent, subsequent to his reinstatement as an NMR, satisfies the requirement of G.O.Ms.No.143, dated 16.03.1984, would he be entitled for regularization of his services in accordance with the judgment of this Court in W.P.No.1190 of 1987, dated 04.02.1987. Since the cause of action in I.D.No.806 of 1992, relating to termination of his services, is distinct from the issue of regularization, which was the subject matter of W.P.No.1190 of 1987, dated 04.02.1987, principles of *res judicata* would not apply.

Learned Government Pleader would refer to the counter affidavit, filed by the petitioner before the Labour Court, in support of her submission that the first respondent was never engaged in the services of the petitioner. It is true that the counter filed before the Labour Court contains such a plea, but a plea has necessarily to be proved and in the absence of any evidence being adduced by the petitioner before the Labour Court a plea, which has not been proved, cannot be taken note of. Not only has the petitioner chosen not to examine witnesses in its defence, it has also chosen not to cross-examine the first respondent and has thereby failed to controvert the evidence adduced on behalf of the first respondent, both oral and documentary. The findings of the Labour Court that the first respondent's services had been terminated, in violation of Section 25-F of the Act, cannot be said to be a finding, which is perverse or to be based on no evidence. No interference, in respect of such findings, is called for in Certiorari proceedings under Article 226 of the Constitution of India. Once the termination has been held to be in violation of Section 25-F of the Act, the termination is *ab initio void* and the workman is deemed to be in continuous service. The award of the Labour Court directing the petitioner to reinstate the first respondent does not call for interference. The compensation awarded, in lieu of back wages, of Rs.5,000/- is a small sum when seen in the context of termination of the services of the workman in 1987, ten years prior to the date of award on 22.02.1996. The award of the Labour Court in I.D.No.806 of 1992, dated 22.02.1996 does not call for any interference.

The writ petition is accordingly dismissed. There shall however be no order as to costs.

WPMP.No.25144 of 2005 is filed by the first respondent seeking direction to pay SSR wages prescribed by the Government, from time to time, instead of

the wages last drawn under Section 17-B of the Act. Payment of wages, under Section 17-B, is during the pendency of proceedings before this Court and since orders have been passed finally in this writ petition, the interlocutory orders passed earlier does not survive. Needless to state that it is always open to the first respondent to take such action, to have the award of the Labour Court implemented, as is available to him in law. WPMP is also dismissed. No costs.

17.10.2005

usd